



10 March 2017

Our reference: LEX 24848

Mr Ben Fairless

By email: [foi+request-2891-8bbe2e7e@righttoknow.org.au](mailto:foi+request-2891-8bbe2e7e@righttoknow.org.au)

Dear Mr Fairless

### Freedom of Information Request – Charge decision

I refer to your request dated and received by the Department of Human Services (the **department**) on 29 December 2016, for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following:

'the current induction training materials for contact centre staff hired to assist clients with: Medicare and Centrelink Services'.

On 25 January 2017, you revised the scope of your request to the following:

'facilitated powerpoints and participant resources'.

### Decision on charge

The following is my decision in relation to your request for reduction or non-imposition of the charge imposed under the FOI Act (the **charge**). I have decided to not to reduce the amount of the charge that was notified to you.

The reasons for my decision, including the relevant sections of the FOI Act, are set out below.

### Background

On 30 January 2017, you were notified that you are liable to pay a charge for the processing of your request and advised that the preliminary assessment of that charge is \$353.92, calculated as follows:

|  |          |
|--|----------|
| Search and retrieval time: 1.15 hours, at \$15.00 per hour:                          | \$17.25  |
| Decision-making time (*after deduction of 5 hours): 16.83 hours, at \$20.00 per hour | \$336.67 |

|              |                 |
|--------------|-----------------|
| <b>TOTAL</b> | <b>\$353.92</b> |
|--------------|-----------------|

\*The FOI Act provides that the first five hours of decision-making time are free of charge and this is reflected in the calculation.

On 7 February 2017 you responded to the preliminary charge, contending that the charge of \$353.92 was wrongly assessed. You stated that, in your view, the decision making time of 16.83 hours was excessive, given that the majority of pages would be PowerPoint presentations which would take limited time to review.

You also contended that the charges should be waived in full because the information sought is in the public interest. In particular, you stated that providing the requested information would assist in the public debate of the adequacy of training provided to the department.

### **What I took into account**

In reaching my decision I took into account:

- the department's correspondence of 30 January 2017, notifying you of the charge;
- your correspondence of 7 February 2017, contending that the charge should not be imposed;
- documents falling within the scope of your request;
- the FOI Act;
- the *Freedom of Information (Charges) Regulations 1982* (the **Regulations**); and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the **Guidelines**).

### **Relevant legislation**

Section 29(4) of the FOI Act provides that, where an applicant has notified an agency that the applicant contends that a charge should be reduced or not imposed in relation to a request under the FOI Act, then the agency may decide that the charge is to be reduced or not imposed.

Section 29(5) of the FOI Act provides that, without limiting the matters that the agency may take into account when making a decision about whether to reduce or not impose a processing charge, the decision maker must consider:

- whether payment of a charge, or part of it, would cause financial hardship to an applicant; and
- whether the giving of access to the document in question is in the general public interest or in the interest of a substantial section of the public.

Section 29(8) of the FOI Act provides that, if an applicant makes a contention about a charge as mentioned in subsection 29(4) and the agency makes a decision to reject the contention in whole or in part, then the agency must give the applicant written notice of the decision and the reasons for the decision.

### **Calculation of the charge**

As a preliminary step in my consideration of whether a processing charge should apply to this request, I have examined the calculations which were used to determine the charge.

On 30 January 2017, you were notified that you are liable to pay a charge for the processing of your request and advised that the preliminary assessment of that charge is \$353.92. The calculation for this assessment is set out above.

In calculating processing charges for FOI requests, the department applies relevant provisions of the Regulations, the FOI Act and the Guidelines in relation to the amounts it is permitted to charge.

In matters where an applicant requests documents the department holds, the department calculates the amount it may charge based on:

- the time taken to search for, and retrieve, files containing documents within scope;
- the number of third parties with whom it will be necessary to consult in the course of making a decision regarding the release of the documents;
- the number and size (number of pages) of the documents that have been identified as falling within the scope of the requests and the resultant time taken for decision-making in relation to each of those pages (less the first five hours of decision-making, which are free of charge; and
- the number of pages considered sensitive, requiring redaction (and therefore potentially extra decision-making time).

Based on estimates and documents received from the department's Learning and Development Branch, it was estimated that it had taken approximately 1.15 hours to locate and collate the relevant documents, and would take a further 16.83 hours to examine the documents, apply any redactions, undertake any necessary consultation and prepare a decision on access.

In your email of 7 February 2017, you state the following:

'The documents mentioned include PowerPoint presentations which contain significantly less information than, for example, Microsoft Word documents due to the size of the text and images. It would take at most a few minutes to review these documents. I contend that there would be few exemptions applied to these presentations and in the word documents, therefore significantly reducing the time below 4 minutes per page.'

I am not persuaded by these submissions. On review of the documents within the scope of your request, I agree that the part of your request that refers to powerpoint presentations would take less time to review. However, you have also requested 'participant resources' which contain significant amounts of information which would need to be carefully examined. In light of this, it is my view that the average amount of time to examine the documents, apply any redactions, undertake any necessary consultation and prepare a decision on access would be approximately 16.83 hours.

Having examined the documents within the scope of your request, the calculation of the charge and the reasoning behind it, I am of the view that the charge calculated fairly reflects the work involved in processing your request and is a fair contribution towards the cost of processing your request.

### **Reasons for decision**

I note that subsection 29(5) of the FOI Act prescribes matters that I must take into account. My consideration of those matters is set out below.

#### **Financial Hardship**

Paragraph 29(5)(a) of the FOI Act provides that, without limiting the matters an agency may take into account in determining whether or not to reduce or not to impose the charge, the agency must take into account whether the payment of the charge, or part of it, would cause financial hardship to the applicant.

I note that you have not provided any evidence to indicate that payment of the charge would cause financial hardship. On that basis, I have not considered this matter further.

## Public Interest

Paragraph 29(5)(b) of the FOI Act provides that, without limiting the matters the agency may take into account in determining whether or not to reduce or not to impose the charge, the agency must take into account whether the giving of access to the document in question is in the general public interest or in the interest of a substantial section of the public.

Relevantly, paragraph 4.81 of the Guidelines states:

“an applicant relying on s 29(5)(b) should identify or specify the ‘general public interest’ or the ‘substantial section of the public’ that would benefit from disclosure. This may require consideration both of the content of the documents requested and the context in which their public release would occur”.

In addition, paragraph 4.80 of the Guidelines state that:

“...the public interest test for waiver in s 29(5)(b) is different to the public interest test in s 11A(5) that applies to conditionally exempt documents.”

In your email of 7 February 2017, you state the following:

‘this information is entirely in the public interest. Centrelink has come under increased pressure and scrutiny in relation to the information it is providing it's customers, it's customer service generally, and the resilience of it's staff. This information would assist in the public debate of the adequacy of training provided to the department. I therefore contend that the department should waive all charges in respect of this request’.

I am not persuaded by these submissions. In particular, I am not persuaded that there is significant public debate concerning the adequacy of training provided to contact centre staff of the department. While I accept that, broadly speaking, there is some general interest in this topic, I am not persuaded the scope of documents you have requested would assist public comment on or participation in this discussion.

Finally, you have not identified the ‘general public interest’ or the ‘substantial section of the public’ that would benefit from disclosure of the documents.

In light of these factors, I have decided that there is no public interest in reducing or waiving the charge.

## Other grounds for reduction of the charge

Subsection 29(4) of the FOI Act provides a general discretion to reduce or not to impose a charge which goes beyond matters relating to financial hardship and the public interest. In considering this general discretion, I have had regard to whether the charge imposed appropriately reflects the cost of processing your request and whether the documents within the scope of your request are similar to documents that have been published on the department's website under section 11C of the Act.

With regard to whether the charge imposed appropriately reflects the cost of processing your request, as outlined above, I consider that the calculation of the charge fairly reflects the work in processing your request. I note that processing charges are designed to be a contribution to the cost of processing FOI requests and do not compensate the full costs associated with the processing of a request.

I note also that, in recognition of the general public interest in allowing access to government information, the FOI Act provides for the first five hours of decision-making time to be free of charge for all applicants. This discount was applied to the calculation of the charge notified to you on 30 January 2017.

In regard to whether the documents within the scope of your request are similar to documents that have previously been published on the department's website under section 11C of the Act, I consider that the documents within the scope of your request are broadly similar to the training material published on 20 December 2010 and 25 May 2015, 26 August 2015, 21 September 2015, 14 October 2015. However, I accept that the documents you have requested would not be covered in these published documents. I have decided that this point, on its own, does not warrant a reduction in charges in this instance.

### Conclusion

On balance, after weighing the arguments that you have submitted, I have decided to not to reduce the amount of the charge that was notified to you.

### **Options to proceed with your request**

In order for your request to continue to be processed, you are required to respond in writing within 30 days of receipt of this notice in accordance with one of the following options:

- A. Pay the Charge (or deposit of \$88.48);
- B. Request a review of the decision to impose the charge; or
- C. Withdraw your request.

Further information on each of these options is set out below.

#### Option A – Pay the Charge

The amount due should be paid by cheque or money order and made out to the Collector of Public Monies. Please quote reference number LEX 24848 with your payment.

Please send this cheque or money order to:

FOI and Information Release Branch  
Legal Services Division  
Department of Human Services  
18 Canberra Ave, Forrest ACT 2603

If you elect to pay the reduced charge amount, please email [FOI.Legal.Team@humanservices.gov.au](mailto:FOI.Legal.Team@humanservices.gov.au) once you have posted your cheque or money order to advise us of your payment.

#### Option B – Request a review of the decision to impose the Charge

Please find attached a document setting out your rights of review at **Attachment A**.

#### Option C – Withdraw your request

If you wish to withdraw your request, you may do so in writing. Alternatively, you may wish to consider narrowing the terms of your request. If the scope of your request can be reduced, the charge may be recalculated accordingly.

**Further Information**

Should you have any enquiries concerning this matter, please contact me at [FOI.Legal.Team@humanservices.gov.au](mailto:FOI.Legal.Team@humanservices.gov.au).

Yours sincerely

Authorised FOI Decision Maker  
FOI Legal Team  
FOI and Litigation Branch Legal Services Division  
Department of Human Services

## INFORMATION ON RIGHTS OF REVIEW

### *FREEDOM OF INFORMATION ACT 1982*

#### **Asking for a full explanation of a Freedom of Information decision**

Before you ask for a formal review of an FOI decision, you can contact us to discuss your request. We will explain the decision to you. This gives you a chance to correct misunderstandings.

#### **Asking for a formal review of an Freedom of Information decision**

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by:

1. an Internal Review Officer in the Department of Human Services (the department); and/or
2. the Australian Information Commissioner.

**Note 1:** There are no fees for these reviews.

#### **Applying for an internal review by an Internal Review Officer**

If you apply for internal review, a different decision maker to the departmental delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be:

- made in writing
- made within 30 days of receiving this letter
- sent to the address at the top of the first page of this letter.

**Note 2:** You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

#### **Applying for external review by the Australian Information Commissioner**

If you do not agree with the original decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision.

If you do not receive a decision from an Internal Review Officer in the department within 30 days of applying, you can ask the Australian Information Commissioner for a review of the original FOI decision.

You will have 60 days to apply in writing for a review by the Australian Information Commissioner.